

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD¹
REGION 32**

**KAISER FOUNDATION HOSPITALS,
KAISER FOUNDATION HEALTH PLAN, INC.
AND THE PERMANENTE MEDICAL GROUP, INC.**

Employer

Case 32-UC-385

**OFFICE & PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, LOCAL 29, AFL-CIO**

Petitioner

DECISION AND ORDER

Upon a petition filed under Section 9(c) of the National Labor Relations Act, as amended, careful investigation and consideration took place.²

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned Acting Regional Director.

Upon the entire record in this proceeding, the Acting Regional Director finds:

(1) The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

(2) Petitioner proposes to clarify the bargaining unit as follows:

Petitioner seeks to include in its current collective bargaining unit temporary agency employees who have been employed at the Employer over sixty (60) days in its geographical jurisdiction.

(3) Clarification of the bargaining unit is presently not warranted inasmuch as the investigation revealed that the temporary agency employees sought by Petitioner historically have been excluded from the bargaining unit. Specifically, a series of collective bargaining agreements covering the unit at issue, including the current

¹ Hereinafter referred to as the Board.

² The parties each provided position papers and documents in support of their respective positions. A review of those materials reveals that the facts in this matter as discussed *infra* are undisputed.

agreement effective October 1, 2000 through November 3, 2006, have contained provisions that reflect that work performed by temporary agency employees is deemed outside the bargaining unit. Pursuant to established Board law, unit clarification is not appropriate during the term of a contract where such clarification would upset the agreement of the parties concerning the exclusion of various individuals. *Union Electric Company*, 217 NLRB 666, 667 (1975); *Batesville Casket Company*, 283 NLRB 795, 797 (1987). There was no evidence that there have been any changes in the functions performed by the temporary agency employees or any other circumstance which would render the *Union Electric* rule inapplicable herein. Although Petitioner contends that the Board's recent decision in *M.B. Sturgis, Inc.*, 331 NLRB No. 173 (August 25, 2000), authorizes the granting of the petition for clarification, there is nothing in that decision indicating that the Board has overruled or limited its *Union Electric* rule in any way. It is noted that the parties' current contract became effective in October 2000, after the Board's *Sturgis* decision had issued. Accordingly, unit clarification remains inappropriate in this matter.

ORDER

IT IS HEREBY ORDERED that the petition in the instant case be, and it hereby is, dismissed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by December 13, 2001.

DATED AT Oakland, California, this 29th day of November, 2001.

Veronica Clements, Acting Regional Director
National Labor Relations Board
Region 32

1301 Clay Street, Suite 300N
Oakland, California 94612-5211
32-1233

385-7533-2020